

REMARKS

Claims 1-13 are pending in the above-identified application. These claims have been subjected to a Unity of Invention Requirement under 35 U.S.C. 372 as follows:

Group I -- claims 1-4, 9 12, and 13, directed to a compound or composition of formula I;

Group II -- claim 5, directed to a compound or composition of formula I.1;

Group III -- claim 6, directed to a compound or composition of formula I.2;

Group IV -- claim 7, directed to a compound or composition of formula I.3;

Group V -- claim 8, directed to a process for preparing a compound or composition of formula I;

Group VI -- claim 10, directed to a seed, comprising a compound of Formula I;  
and

Group VII -- claim 11, directed to a process for controlling phytopathogenic harmful fungi.

Election

In response to the above-noted Requirement, Applicant hereby elects the subject matter of Group I, i.e. claims 1-4, 9, 12, and 13. In addition, it is noted that the claims have also been subjected to an Election of Species Requirement. In response to this Requirement, Applicant hereby elects the compound species of I-5 shown in Table I at page 20 of the specification. Both the election in response to the Unity of Election Requirement, and the election in response to the Election of Species Requirement are respectfully traversed based on the following reasons.

Reasons for Traversals

It is first noted that no issue regarding “unity” previously arose as is evident from a review of International Preliminary Examination Report (IPER). Accordingly, it is respectfully submitted that there is a clear basis for unity in connection with the present application.

It is further submitted that the “special technical feature” which supports novelty and patentability in connection with the compounds of formula I is the cyano or alkoxy substituent for variable “X” (i.e. position five of the triazolopyrimidine skeleton). In this regard, it is noted that the reference mentioned in the Office Action, i.e. Pees '876 (USP 6,117,876), merely discloses halogen at position five of the triazolopyrimidine skeleton. Pees '876 fails to disclose or suggest a cyano or alkoxy substituent at this position. Consequently, Pees '876 fails to disclose or suggest the special technical feature of the compounds of formula I, such that unity exists and the above-noted Requirement should be withdrawn. It is further respectfully requested that the provisional Election Requirement also be withdrawn and that the Patent Examiner extend examination to all of the subject matter encompassed by all of the present claims. Finally, it is submitted that there is no undue burden placed on the Examiner to examine all of the subject matter of the presently pending claims.

Duty of Disclosure

In compliance with the Applicant’s “duty of disclosure”, it is noted that previously cited WO 2004/087706 (corresponding to US 2006/0211711 or “US ‘711”) and WO 2004/087705 (corresponding to US 2006/0211573 or “US ‘573”) disclose some examples that fall within the scope of present claim 1. Specifically, Examples 2 and 3 at page 10 of US ‘711 and Examples 2 and 3 at page 11 of US ‘573 fall within present claim 1. The issues arising in connection with these disclosures will be addressed in the future.


If any questions arise in the above matters, please contact Applicant’s representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: September 10, 2007

Respectfully submitted,

By   
\_\_\_\_\_  
Andrew D. Meikle  
Registration No.: 32,868  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant